

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Pacific Gas and Electric Company to
Implement and Recover in Rates the Costs of its
Photovoltaic (PV) Program (U 39 E)

A.09-02-019
(Filed February 24, 2009)

**JOINT OPENING COMMENTS OF THE WESTERN POWER TRADING FORUM
AND THE DIRECT ACCESS CUSTOMER COALITION ON THE
PROPOSED DECISION OF ALJ EBKE**

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February 16, 2010

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Pursuant to Article 14 of the California Public Utilities Commission (“Commission”) Rules of Practice, the Western Power Trading Forum (“WPTF”)¹ and the Direct Access Customer Coalition (“DACC”)² submit these joint opening comments concerning the January 26, 2010, Proposed Decision of Administrative Law Judge (“ALJ”) Maryam Ebke (“PD”) regarding the Application of Pacific Gas and Electric Company (“PG&E”) to Implement Its Photovoltaic Program (“Application”).

I. INTRODUCTION AND SUMMARY OF COMMENTS

During this proceeding, WPTF and DACC have opposed certain elements of PG&E’s proposal because it (a) failed to meet the criteria for UOG projects as set forth in Decision (“D.”) 07-12-052 and Rulemaking (“R”) 06-02-013; and (b) inappropriately sought to impose nonbypassable charges (“NBCs”) on direct access customers. DACC’s and WPTF’s

¹ WPTF is a broadly based membership organization dedicated to enhancing competition in Western energy markets, reducing the cost of electricity to consumers, and maintaining high levels of electric system reliability. WPTF members include electric generators, investment banks, wholesale marketing and trading entities, scheduling coordinators, energy consultants, energy service providers, and public utilities—all of which are active participants in the restructured California electricity market. WPTF’s activities and advocacy are focused on promoting the development of competitive wholesale and retail energy markets throughout the West and developing uniform operating rules to facilitate transactions among market participants.

² DACC is a regulatory alliance of commercial, industrial and governmental customers who have opted for direct access for some or all of their loads.

participation in this proceeding has been premised on the well-established Commission principle that supports the use of “competitive market first” in the development of utility generation resources. DACC and WPTF are encouraged that the PD reflects this commitment by the Commission.

Specifically, the PD adopts the following recommendations of various parties, including DACC and WPTF, with respect to PG&E’s Solar PV proposal:

First, PG&E is directed to hold truly competitive RFOs for the up to 250 MW of PPAs with third party renewable resource developers. Both the fixed price RFO approach and PG&E’s proposal for turnkey EPC bids are rejected by the Commission.³ The PD clearly and appropriately concludes that, “Under PG&E’s fixed price PPA, however, the financial benefits of the lower third party costs cannot be realized by ratepayers. Finally, there is no reason why PG&E cannot use a competitive price and still select the most viable projects.”⁴

Second, the Commission rejects PG&E’s contention that the PV Program should be eligible for a non-bypassable charge associated with any “stranded costs.”⁵ DACC and WPTF have repeatedly noted that Direct Access (“DA”) customers already pay their energy service providers (“ESP”) for renewable portfolio standard compliance costs incurred by their ESP. The PD correctly notes that DA customers “would be paying double, if we were to impose a non-bypassable charge for the PV program on them.”⁶

³ See, PD, Section 5.1, at pp. 20-25.

⁴ PD, at p. 30.

⁵ See, PD, Section 11, at pp. 52-54.

⁶ PD, at p. 53.

Third, the PD further adopts the use of a competitively set benchmark from the independent power producer (“IPP”) portion in pricing the utility-owned portion over the same 20 year term. Although WPTF and DACC did not address this issue in their joint filings, it is more consistent with the Commission’s “competitive markets first” concept, and ensures utility customers pay a competitive price for the same product.

It is also notable that both ALJ Ebke’s PD and President Peevey’s alternate PD that was issued concurrently contain precisely the same language with regard to these issues. Per the directive in ALJ Ebke’s February 9, 2010, email that “comments to the proposed decision and the alternate must be filed as two separate documents,” WPTF and DACC are filing comments concurrently herewith expressing support as well for the alternate PD’s treatment of these two issues. WPTF and DACC take no position as to whether the PD or the alternate PD should be adopted, as long as both retain the current rulings on the competitive procurement and non-bypassable charge issues. Furthermore, WPTF and DACC do not repeat herein the arguments, citations and discussion contained in our October 1, 2009 joint opening and October 16, 2009, joint reply briefs.

II. CONCLUSION

The fixed price RFO approach proposed by PG&E is inconsistent with Commission precedent because it ignores the Commission’s commitment to “market competition and the cost discipline market competition provides.” The PD correctly rejects this proposal and directs PG&E to hold truly competitive RFOs for the up to 250 MW of PPAs with third party renewable resource developers. Furthermore, the PD’s provision that the recovery of utility-owned generation costs that result from the Solar PV program will be based on the prices that result

from the competitive solicitations, will ensure that the benefits of competitive procurement will accrue to the utility owned portion of the Solar PV program.

Finally, the PD also correctly rejects PG&E's contention that the PV Program should be eligible for a non-bypassable charge associated with any "stranded costs." Imposition of the stranded costs would cause DA customers to pay double, once for the RPS compliance costs of their own ESP suppliers and yet again for a portion of PG&E's stranded cost. The PD correctly rejects such inequitable treatment.

In conclusion, WPTF and DACC strongly urge the Commission to retain the Proposed Decision's findings and the conclusion that rejects a fixed price PPA, that mandates a true competitive RFO for up to 50% of the Solar PV Program and that rejects the PG&E request for a non-bypassable charge associated with any stranded costs.

WPTF and DACC thank the Commission for its attention to these joint comments.

Respectfully submitted,



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February 16, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Joint Opening Comments of the Western Power Trading Forum and the Direct Access Customer Coalition on the Proposed Decision of ALJ Ebke* on all parties of record in proceeding *A.09-02-019* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Dated at Woodland Hills, California, this 16th day of February, 2010.



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